Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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U.S. Customs Service

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THE DEPARTMENT OF THE TREASURY

U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 89–67)

APPROVAL OF BUREAU VERITAS HOLDINGS, INCORPORATED, AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Bureau Veritas Holdings, Incorporated as a commercial gauger.

SUMMARY: Bureau Veritas Holdings, Incorporated of New York, New York, 10002, recently applied to Customs for approval to gauge and sample imported petroleum, petroleum products, organic chemicals, and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Bureau Veritas Holdings, Inc. meets the requirements for approval.

Therefore, in accordance with § 151.13(c), Bureau Veritas Holdings, Incorporated, 1250 Broadway, New York, New York, 10002, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2446).

Dated: July 20, 1989.

JOHN B. O'LOUGHLIN,
Director,
Office of Laboratories and Scientific Services.

[Published in the Federal Register, July 26, 1989 (54 FR 31137)]

(T.D. 89–68)

FOREIGN CURRENCIES

Quarterly Rates of Exchange: July 1 through September 30, 1989

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.765500
Austria	Schilling	0.073611
Belgium	Franc	0.024746
Brazil	Cruzado	N/A
Canada	Dollar	0.836960
China, P.R.	Renimbi yuan	0.267996
Denmark	Krone	0.132820
Finland	Markka	0.229016
France	Franc	0.152614
Germany	Deutsche mark	0.518530
Hong Kong	Dollar	0.128222
India	Rupee	0.061125
Iran	Rial	N/A
Ireland	Pound	1.375500
Italy	Lira	0.000715
Japan	Yen	0.007080
Malaysia	Dollar	0.370508
Mexico	Peso	N/A
Netherlands	Guilder	0.459982
New Zealand	Dollar	0.572000
Norway	Krone	0.141393
Philippines	Peso	N/A
Portugal	Escudo	0.006194
Republic of South Africa	Rand	0.363636
Singapore	Dollar	0.509684
Spain	Peseta	0.008190
Sri Lanka	Rupee	0.028954
Sweden	Krona	0.152091
Switzerland	Franc	0.604595
Thailand	Baht (tical)	0.038610
United Kingdom	Pound	1.577400
Venezuela	Bolivar	N/A

(LIQ–03–01 S:NISD CIE)

Dated: July 5, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 89-69)

FOREIGN CURRENCIES

Daily Rates for Countries Not on Quarterly List for April 1989

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

April 3, 1989	$0.006258
April 4, 1989	.006301
April 5, 1989	.006287
April 6, 1989	.006291
April 7, 1989	.006290
April 10, 1989	.006266
April 11, 1989	.006253
April 12, 1989	.006245
April 13, 1989	.006275
April 14, 1989	.006240
April 17, 1989	.006309
April 18, 1989	.006293
April 19, 1989	.006305
April 20, 1989	.006296
April 21, 1989	.006329
April 24, 1989	.006327
April 25, 1989	.006289
April 26, 1989	.006250
April 27, 1989	.006246
April 28, 1989	.006252

Korea won:

April 3, 1989	$0.001484
April 4, 1989	.001487
April 5, 1989	N/A
April 6, 1989	.001492
April 7, 1989	.006290
April 10, 1989	.001492
April 11, 1989	.001492
April 12, 1989	.001492
April 13, 1989	.001492
April 14, 1989	.001493
April 17, 1989	.001492
April 18, 1989	.001493
April 19, 1989	.001494
April 20, 1989	.001494
April 21, 1989	.001495
April 24, 1989	.001496
April 25, 1989	.001495

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for April 1989 (continued):

Korea won (continued):

April 26, 1989	$0.001495
April 27, 1989	.001495
April 28, 1989	.001495

Taiwan N.T. dollar:

April 3, 1989	$0.036590
April 4, 1989	N/A
April 5, 1989	N/A
April 6, 1989	.036839
April 7, 1989	.036860
April 10, 1989	.036844
April 11, 1989	.036867
April 12, 1989	.036883
April 13, 1989	.036891
April 14, 1989	.036917
April 17, 1989	.036887
April 18, 1989	.036832
April 19, 1989	.036883
April 20, 1989	.036897
April 21, 1989	.036928
April 24, 1989	N/A
April 25, 1989	.037120
April 26, 1989	.037327
April 27, 1989	.037665
April 28, 1989	.038536

(LIQ-03-01 S:NISD CIE)

Dated: June 29, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 89-70)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MAY 1989

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, May 29, 1989.

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for May 1989 (continued):

Greece drachma:

May 1, 1989	$0.006252
May 2, 1989	.006225
May 3, 1989	.006219
May 4, 1989	.006211
May 5, 1989	.006180
May 8, 1989	.006187
May 9, 1989	.006155
May 10, 1989	.006156
May 11, 1989	.006135
May 12, 1989	.006126
May 15, 1989	.006057
May 16, 1989	.006072
May 17, 1989	.005963
May 18, 1989	.005981
May 19, 1989	.005983
May 22, 1989	.005875
May 23, 1989	.005865
May 24, 1989	.005858
May 25, 1989	.005874
May 26, 1989	.005954
May 30, 1989	.005850
May 31, 1989	.005891

South Korea won:

May 1–11, 1989	$0.001495
May 12, 1989	N/A
May 15–31, 1989	.001494

Taiwan N.T. dollar:

May 1, 1989	N/A
May 2, 1989	$0.038730
May 3, 1989	.038760
May 4, 1989	.039370
May 5, 1989	.039362
May 8, 1989	.038640
May 9, 1989	.038647
May 10, 1989	.038835
May 11, 1989	.038986
May 12, 1989	.038956
May 15, 1989	.038722
May 16, 1989	.038835
May 17, 1989	.038865
May 18, 1989	.038812
May 19, 1989	N/A
May 22, 1989	.038610
May 23, 1989	.038484
May 24, 1989	.038573
May 25, 1989	.038580

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for May 1989 (continued):

Taiwan N.T. dollar (continued):

May 26, 1989	$0.038563
May 30, 1989	N/A
May 31, 1989	.038462

(LIQ-03-01 S:NISD CIE)

Dated: June 29, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 89-71)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR MAY 1989

The following rates of exchange are based upon raes certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 89-50 for the followi:ıg countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to conveert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, May 29, 1989.

Australia dollar:

May 12, 1989	$0.782500
May 15, 1989	.778100
May 16, 1989	.771400
May 17, 1989	.758600
May 18, 1989	.759500
May 19, 1989	.762800
May 22, 1989	.743500
May 23, 1989	.747500
May 24, 1989	.747000
May 25, 1989	.756500
May 26, 1989	.752000
May 30, 1989	.752200
May 31, 1989	.747000

Foreign Currencies—Variances from quarterly rate for May 1989 (continued):

Austria schilling:

May 22, 1989	$0.070709
May 23, 1989	.070771
May 24, 1989	.070696
May 25, 1989	.071238
May 26, 1989	.071480
May 30, 1989	.070721

Belgium franc:

May 22, 1989	$0.023776
May 23, 1989	.023787
May 24, 1989	.023730
May 25, 1989	.023952
May 26, 1989	.024015
May 30, 1989	.023764

Denmark krone:

May 22, 1989	$0.127632
May 23, 1989	.127698
May 24, 1989	.127453
May 25, 1989	.128601
May 26, 1989	.128916
May 30, 1989	.127567
May 31, 1989	.129853

Finland markka:

May 22, 1989	$0.223464
May 23, 1989	.223289
May 24, 1989	.222767
May 30, 1989	.223239

France franc:

May 17, 1989	$0.149633
May 19, 1989	.149903
May 22, 1989	.146994
May 23, 1989	.147102
May 24, 1989	.146714
May 25, 1989	.148017
May 26, 1989	.148368
May 30, 1989	.146908
May 31, 1989	.149276

Germany deutsche mark:

May 22, 1989	$0.479960
May 23, 1989	.497909
May 24, 1989	.497018

Foreign Currencies—Variances from quarterly rate for May 1989 (continued):

Germany deutsche mark (continued):

May 25, 1989	$0.501279
May 26, 1989	.502639
May 30, 1989	.497686

Ireland pound:

May 22, 1989	$1.331000
May 23, 1989	1.333000
May 24, 1989	1.327500
May 25, 1989	1.340000
May 30, 1989	1.327500

Italy lira:

May 22, 1989	$0.000686
May 23, 1989	.000687
May 24, 1989	.000686
May 30, 1989	.000688

Japan yen:

May 17, 1989	$0.007181
May 19, 1989	.007205
May 22, 1989	.007040
May 23, 1989	.007042
May 24, 1989	.007003
May 25, 1989	.007042
May 26, 1989	.007071
May 30, 1989	.006971
May 31, 1989	.007026

Netherlands guilder:

May 22, 1989	$0.441756
May 23, 1989	.441794
May 24, 1989	.441014
May 25, 1989	.444741
May 26, 1989	.446130
May 30, 1989	.441501

Norway krone:

May 22, 1989	$0.138408
May 23, 1989	.138265
May 24, 1989	.138102
May 25, 1989	.139014
May 26, 1989	.139334
May 30, 1989	.137950

FOREIGN CURRENCIES—Variances from quarterly rate for May 1989 (continued):

Portugal escudo:

May 22, 1989	$0.006031
May 23, 1989	.006033
May 24, 1989	.006015
May 25, 1989	.006078
May 26, 1989	.006114
May 30, 1989	.006004

Republic of South Africa rand:

May 17, 1989	$0.370028
May 18, 1989	.370028
May 19, 1989	.368460
May 22, 1989	.359971
May 23, 1989	.361141
May 24, 1989	.358038
May 25, 1989	.360101
May 26, 1989	.364631
May 30, 1989	.358102
May 31, 1989	.364964

Spain peseta:

May 22, 1989	$0.007974
May 23, 1989	.007978
May 24, 1989	.007955
May 25, 1989	.008032
May 26, 1989	.007976
May 30, 1989	.007758
May 31, 1989	.007949

Sweden krona:

May 22, 1989	$0.147885
May 23, 1989	.148126
May 24, 1989	.147940
May 30, 1989	.147962

Switzerland franc:

May 15, 1989	$0.575374
May 16, 1989	.576037
May 17, 1989	.567633
May 18, 1989	.569476
May 19, 1989	.568731
May 22, 1989	.557942
May 23, 1989	.559128
May 24, 1989	.559910
May 25, 1989	.569411
May 26, 1989	.575705
May 30, 1989	.569638

FOREIGN CURRENCIES—Variances from quarterly rate for May 1989 (continued):

United Kingdom pound:

May 22, 1989	$1.580600
May 23, 1989	1.567800
May 24, 1989	1.569500
May 25, 1989	1.580300
May 26, 1989	1.588000
May 30, 1989	1.558000
May 31, 1989	1.571500

(LIQ-03-01 S:NISD CIE)

Dated: June 29, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 89-72)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JUNE 1989

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

June 1, 1989	$0.005872
June 2, 1989	.005914
June 5, 1989	.005973
June 6, 1989	.005863
June 7, 1989	.005918
June 8, 1989	.005891
June 9, 1989	.005797
June 12, 1989	.005741
June 13, 1989	.005759
June 14, 1989	.005747
June 15, 1989	.005713
June 16, 1989	.005849
June 19, 1989	.005834
June 20, 1989	.005882
June 21, 1989	.005834
June 22, 1989	.005931

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 1989 (continued):

Greece drachma (continued):

June 23, 1989	$0.005942
June 26, 1989	.005947
June 27, 1989	.005942
June 28, 1989	.005899
June 29, 1989	.005935
June 30, 1989	.005928

South Korea won:

June 1-5, 1989	$0.001494
June 6, 1989	N/A
June 7–12, 1989	.001494
June 13, 1989	.001493
June 14, 1989	.001494
June 15, 1989	.001493
June 16, 1989	.001493
June 19, 1989	.001493
June 20–23, 1989	.001494
June 26, 1989	.001495
June 27, 1989	.001494
June 28, 1989	.001494
June 29, 1989	.001493
June 30, 1989	.001493

Taiwan N.T. dollar:

June 1, 1989	$0.038476
June 2, 1989	.038491
June 5, 1989	.038506
June 6, 1989	.038386
June 7, 1989	.038344
June 8, 1989	N/A
June 9, 1989	N/A
June 12, 1989	N/A
June 13, 1989	.038230
June 14, 1989	.038197
June 15, 1989	.038157
June 16, 1989	.038329
June 19, 1989	.038439
June 20, 1989	.038462
June 21, 1989	.038388
June 22, 1989	.038562
June 23, 1989	.038536
June 26, 1989	.038388
June 27, 1989	.038536
June 28, 1989	.038536
June 29, 1989	.038565

(LIQ-03-01 S:NISD CIE)

Dated: June 29, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 89-73)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR JUNE 1989

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 89-50 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Australia dollar:

June 1, 1989	$0.753000
June 2, 1989	.758500
June 5, 1989	.756000
June 6, 1989	.752800
June 7, 1989	.757400
June 8, 1989	.751800
June 9, 1989	.745000
June 12, 1989	.739500
June 13, 1989	.742300
June 14, 1989	.742200
June 15, 1989	.748000
June 16, 1989	.752700
June 19, 1989	.754000
June 20, 1989	.757300
June 21, 1989	.769000
June 22, 1989	.776000
June 23, 1989	.772000
June 26, 1989	.772000
June 27, 1989	.765100
June 28, 1989	.757300
June 29, 1989	.755800
June 30, 1989	.755700

Austria schilling:

June 1, 1989	$0.071620
June 6, 1989	.071788
June 8, 1989	.071839

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

Austria schilling (continued):

June 9, 1989	$0.070847
June 12, 1989	.070139
June 13, 1989	.070114
June 14, 1989	.070077
June 15, 1989	.070225
June 16, 1989	.071301
June 19, 1989	.071891
June 20, 1989	.071690

Belgium franc:

June 1, 1989	$0.024073
June 6, 1989	.024155
June 8, 1989	.024155
June 9, 1989	.023832
June 12, 1989	.023585
June 13, 1989	.023568
June 14, 1989	.023552
June 15, 1989	.023613
June 16, 1989	.023992
June 20, 1989	.024149

Denmark krone:

June 1, 1989	$0.129299
June 6, 1989	.129592
June 8, 1989	.129727
June 9, 1989	.127918
June 12, 1989	.126807
June 13, 1989	.126558
June 14, 1989	.126743
June 15, 1989	.126936
June 16, 1989	.128833
June 20, 1989	.129609

Finland markka:

June 9, 1989	$0.224090
June 12, 1989	.221092
June 13, 1989	.220946
June 14, 1989	.220507
June 15, 1989	.221190
June 16, 1989	.224215

France franc:

June 1, 1989	$0.148633
June 6, 1989	.148633
June 8, 1989	.149009
June 9, 1989	.147362
June 12, 1989	.145719
June 13, 1989	.145603

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

France franc (continued):

June 14, 1989	$0.145412
June 15, 1989	.145560
June 16, 1989	.147842
June 19, 1989	.149365
June 20, 1989	.149009
June 21, 1989	.149745

Germany deutsche mark:

June 1, 1989	$0.504083
June 6, 1989	.505178
June 8, 1989	.505638
June 9, 1989	.499127
June 12, 1989	.493827
June 13, 1989	.493462
June 14, 1989	.492732
June 15, 1989	.493998
June 16, 1989	.502008
June 20, 1989	.505561

India rupe:

June 9, 1989	$0.060901
June 12, 1989	.060643
June 13, 1989	.060606
June 14, 1989	.060643
June 15, 1989	.060569
June 16, 1989	.060864
June 19, 1989	.060901
June 20, 1989	.060901
June 21, 1989	.060716
June 22, 1989	.060864
June 23, 1989	.060753
June 26, 1989	.060643
June 27, 1989	.060827
June 28, 1989	.060716
June 29, 1989	.060864
June 30, 1989	.060643

Ireland pound:

June 9, 1989	$1.332500
June 12, 1989	1.319000
June 13, 1989	1.316000
June 14, 1989	1.318000
June 15, 1989	1.319000
June 16, 1989	1.341000

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

Italy lira:

June 9, 1989	$0.000688
June 10, 1989	.000683
June 12, 1989	.000683
June 13, 1989	.000683
June 14, 1989	.000682
June 15, 1989	.000682

Japan yen:

June 1, 1989	$0.007006
June 2, 1989	.007055
June 5, 1989	.007051
June 6, 1989	.006995
June 7, 1989	.007018
June 8, 1989	.006974
June 9, 1989	.006842
June 12, 1989	.000672
June 13, 1989	.006702
June 14, 1989	.006709
June 15, 1989	.006684

Netherlands guilder:

June 1, 1989	$0.447267
June 6, 1989	.448531
June 9, 1989	.443066
June 12, 1989	.438404
June 13, 1989	.438174
June 14, 1989	.437694
June 15, 1989	.438693
June 16, 1989	.445732

New Zealand dollar:

June 2, 1989	$0.582500
June 6, 1989	.577500
June 7, 1989	.571500
June 8, 1989	.570700
June 9, 1989	.567500
June 12, 1989	.557000
June 13, 1989	.560700
June 14, 1989	.562000
June 15, 1989	.559000
June 16, 1989	.568900
June 19, 1989	.569000
June 20, 1989	.572000
June 21, 1989	.575700
June 27, 1989	.579500
June 28, 1989	.574800
June 29, 1989	.576000
June 30, 1989	.573300

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

Norway krone:

June 1, 1989	$0.139334
June 8, 1989	.139402
June 9, 1989	.137998
June 12, 1989	.136500
June 13, 1989	.136500
June 14, 1989	.136519
June 15, 1989	.136715
June 16, 1989	.138313
June 19, 1989	.139421
June 20, 1989	.139053

Portugal escudo:

June 1, 1989	$0.006086
June 6, 1989	.006055
June 7, 1989	.006090
June 8, 1989	.006075
June 9, 1989	.005988
June 12, 1989	.005936
June 13, 1989	.005940
June 14, 1989	.005935
June 15, 1989	.005919
June 16, 1989	.006020
June 19, 1989	.006072
June 20, 1989	.006068
June 21, 1989	.006085
June 22, 1989	.006098
June 26, 1989	.006115
June 28, 1989	.006109
June 29, 1989	.006114
June 30, 1989	.006116

Republic of South Africa rand:

June 1, 1989	$0.361011
June 2, 1989	.365631
June 5, 1989	.364830
June 6, 1989	.360685
June 7, 1989	.363636
June 8, 1989	.361533
June 9, 1989	.358938
June 12, 1989	.353357
June 13, 1989	.352113
June 14, 1989	.352113
June 15, 1989	.350263
June 16, 1989	.357143
June 19, 1989	.358680
June 20, 1989	.359583
June 21, 1989	.359712
June 22, 1989	.363240
June 23, 1989	.362976
June 26, 1989	.360620

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

Republic of South Africa rand (continued):

June 27, 1989	$0.360685
June 28, 1989	.358423
June 29, 1989	.361272
June 30, 1989	.359712

Spain peseta:

June 1, 1989	$0.007955
June 2, 1989	.008048
June 5, 1989	.008019
June 6, 1989	.007794
June 7, 1989	.007859
June 8, 1989	.007784
June 9, 1989	.007728
June 12, 1989	.007680
June 13, 1989	.007678
June 14, 1989	.007672
June 15, 1989	.007686
June 16, 1989	.007800
June 19, 1989	.007994
June 20, 1989	.007962
June 21, 1989	.008013
June 22, 1989	.008010
June 23, 1989	.008045
June 26, 1989	.008010
June 27, 1989	.008052
June 28, 1989	.008013
June 29, 1989	.008059
June 30, 1989	.008045

Sweden krona:

June 9, 1989	$0.148104
June 12, 1989	.146746
June 13, 1989	.146746
June 14, 1989	.146735
June 15, 1989	.143703
June 16, 1989	.148765

Switzerland franc:

June 9, 1989	$0.574713
June 12, 1989	.569638
June 13, 1989	.570548
June 14, 1989	.570613
June 15, 1989	.571690

United Kingdom pound:

June 1, 1989	$1.573000
June 2, 1989	1.592000
June 5, 1989	1.580700

FOREIGN CURRENCIES—Variances from quarterly rate for June 1989 (continued):

United Kingdom pound (continued):

June 6, 1989	$1.571000
June 7, 1989	1.581500
June 8, 1989	1.573000
June 9, 1989	1.554000
June 12, 1989	1.525100
June 13, 1989	1.515500
June 14, 1989	1.514500
June 15, 1989	1.519500
June 16, 1989	1.534000
June 19, 1989	1.548000
June 20, 1989	1.549500
June 21, 1989	1.547000
June 22, 1989	1.553000
June 23, 1989	1.567000
June 26, 1989	1.544800
June 27, 1989	1.566000
June 28, 1989	1.555000
June 29, 1989	1.552006
June 30, 1989	1.549000

(LIQ-03-01 S:NISD CIE)

Dated: July 5, 1989.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

19 CFR Part 101

(T.D. 89-63)

CHANGE IN CUSTOMS SERVICE FIELD ORGANIZATION—FRONT ROYAL, VIRGINIA (VIRGINIA INLAND PORT); CORRECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule: correction.

SUMMARY: A document was published in the Federal Register as T.D. 89-63 (54 FR 29656) on June 27, 1989, amending Part 101, Customs Regulations to establish a new port of entry known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District of the Southeast Region. This document corrects an error that appears in that document relating to the authority citation for Part 101.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch, (202) 666–8237.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register as T.D. 89–63 (54 FR 26956) on June 27, 1989, amended Part 101, Customs Regulations (19 CFR Part 101), relating to the Customs field organization. The document established a new port of entry known as the Virginia Inland Port (VIP) near Front Royal in the Norfolk, Virginia, Customs District, Southeast Region. The authority citation for Part 101 as set forth in the document inadvertently included reference to a Customs Reorganization Plan.

Correction

On page 26957 of the document, the authority citation should read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

Dated: July 19, 1989.

KATHRYN C. PETERSON,
Chief,
Regulations and Disclosure Law Branch.

[Published in the Federal Register, July 26, 1989 (54 FR 31011)]

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 21, 1989.

The following are decisions of the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 89–72)

Foreign Trade Zones: The status and tariff treatment of pecans which are shelled in a foreign trade zone.

Date: February 9, 1989
File: HQ 220095
FOR-2-04 CO:R:C:E 220095 KP
Category: Other

S. RICHARD SHOSTAK, ESQ.
STEIN, SHOSTAK, SHOSTAK & O'HARA
Suite 1240
3580 Wilshire Boulevard
Los Angeles, California 90010–2597

Re: The statue and tariff treatment of pecans which are shelled in a foreign trade zone.

DEAR MR. SHOSTAK:

In your letter dated January 18, 1988, which was submitted on behalf of your client SNA Nut Company, you requested a binding ruling with regard to a pecan-shelling operation which would be performed in a foreign trade zone. We have considered your proposal, and our decision follows:

Facts:

A U.S. company plans to establish a pecan-shelling operating in a foreign trade zone located in El Paso, Texas. Under the proposed operation, unshelled pecans would be entered into the zone. Some of the pecans would be of Mexican origin, and the remainder would be of United States origin. Once in the zone, the pecans would be sorted by size and separated from dirt and debris. Next, they would be placed in hot water for cleaning and softening the shells in preparation for the cracking process. The pecans would then be cracked, and the shells would be separated from the pecan meat. The shells would be transferred to a trash bin for disposal, and the pecans would be sorted by color with inedible meat being removed. Finally, the pecans would be sorted by size according to USDA standards and boxed in 30-pound cases.

The inquirer requests a binding ruling with respect to several aspects of this operation, as set forth below.

Issues:

(1) May the imported Mexican unshelled pecans be designated as privileged foreign merchandise in the foreign trade zone?

(2) If the Mexican unshelled pecans may be and, in fact, are designated as privileged foreign merchandise, would they be classifiable under subheading 0802.90.10, Harmonized Tariff Schedule of the United States (HTSUS) (former item 145.22, Tariff Schedules of the United States (TSUS))?

(3) Would the unshelled pecans from the United States qualify for domestic status in the foreign trade zone, and therefore be eligible for duty-free treatment upon returning to the customs territory of the United States under section 146.43(c), Customs Regulations (19 CFR 146.43(c))?

(4) May the nutshell waste from the shelling operation be (a) destroyed in the foreign trade zone (*e.g.*, by depositing it in the trash), (b) removed to the customs territory of the United States for disposal under 19 CFR 146.52(e), (c) exported, or (d) entered into the United States?

(5) If the nutshell waste may be entered into the United States, would it be classifiable under sub-heading 1404.90.00, HTSUS, (former item 793.00, TSUS) upon entry?

Law and Analysis:

Section 146.41(a), Customs Regulations (19 CFR 146.41(a)), provides that, for purposes of foreign trade zones, foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director. Under this section, then, if proper application is made to the district director, the unshelled Mexican pecans may be designated as privileged foreign merchandise provided that they have not, at that time, been manipulated or manufactured so as to effect a change in

tariff classification. However, in determining whether to approve the application for privileged foreign status, the district director may consider whether the merchandise will remain identifiable to his satisfaction so that the revenue will be adequately protected if and when the pecans are entered into the United States.

Under 19 CFR 146.65(a)(1), privileged foreign merchandise is subject to tariff classification according to its character, condition, and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Accordingly, if the unshelled Mexican pecans are granted privileged foreign status, the sorted and packaged shelled pecans produced therefrom will be classified, upon entry into the United States, under subheading 0802.90.10, HTSUS, and will be dutiable at the rate which was in effect for that provision when the application to obtain privileged foreign status was filed in complete and proper form. Currently, subheading 0802.90.10, HTSUS, carries a duty rate of 11 cents per kilogram.

19 CFR 146.43(a) permits domestic status to be granted, for purposes of foreign trade zones, to, *inter alia,* merchandise the growth, product, or manufacture of the United States on which all internal revenue taxes, if applicable, have been paid. Thus, the U.S. domestic pecans would be eligible for domestic status in the foreign trade zone provided that all applicable taxes on them, if any, have been paid. Generally, no application or permit is required for the admission of domestic status merchandise into a zone. However, if the U.S. pecans are granted domestic status, an application or permit will be required under 19 CFR 146.43(b) to process and transfer them to the customs territory of the United States if they are mixed with merchandise in another zone status (the Mexican pecans) as part of the contemplated operation. If the U.S. domestic pecans are granted domestic status and all requirements pertaining to applications and permits are complied with, then those pecans may return to the customs territory of the United States free of quotas, duty, or tax, as provided in 19 CFR 146.43(c). However, if the domestic pecans lose their identity as domestic merchandise, then they will have nonprivileged foreign status under 19 CFR 146.42(c) and will be subject to tariff classification in accordance with their character, condition, and quantity at the time they enter the customs territory of the United States.

Under title 19, United States Code, section 81c (19 U.S.C. 81c), as amended, foreign and domestic merchandise brought into a foreign trade zone, whether for processing or otherwise, may be exported, destroyed, or sent into the customs territory of the United States from the zone. Thus, the nutshell waste from the shelling operation may be exported from or destroyed in the zone. However, insofar as your proposal to destroy the waste by depositing it in a trash bin is concerned, we have said:

> According to Webster's New World Dictionary, "destroy implies a tearing down or bringing to an end by wrecking, ruining, killing, eradicating, etc. * * *." Any such process should be considered one of destruction for the purposes of the Foreign Trade Zones Act.

C.S.D. 80-67, 14 Cust. Bull. 830, 832 (1979). We do not equate the mere depositing of nutshell waste in a trash bin with processes such as wrecking, ruining, killing, eradicating, and the like. Therefore, we do not consider that action to be a destruction for purposes of the Foreign Trade Zones Act.

The nutshell waste from the proposed operation may also be entered into the United States from the zone. Under 19 CFR 146.42(b), waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone has the status of nonprivileged foreign merchandise. Therefore, if entered for consumption, the nutshell waste from the Mexican pecans would be classifiable under subheading of 1404.90.00, HTSUS (currently duty-free), regardless of whether the Mexican pecans were given privileged foreign status. Nutshell waste from the U.S. domestic pecans, though, would retain their domestic status if they did not lose their identity as domestic merchandise, and could be returned to the customs territory free of duty.

The nutshell waste could not be removed to the customs territory of the United States for disposal under 19 CFR 146.52(e). That section authorizes a district director to permit merchandise in a foreign trade zone to be destroyed outside of the zone if it cannot be properly destroyed within the zone. You have neither established nor even alleged that the nutshells could not be properly destroyed within a foreign trade zone. 19 CFR 146.52(e) also provides that any residue from the destruction of merchandise within a zone, which is determined to be without commercial value, may be removed to the customs territory for disposal. The nutshell waste, though, is not residue from the destruction of other merchandise within a zone.

Holdings:

(1) The imported Mexican unshelled pecans may be designated as privileged foreign merchandise in the foreign trade zone upon approval by the district director of a proper application therefor.

(2) If the Mexican unshelled pecans are designated as privileged foreign merchandise, they would be classifiable under subheading 0802.90.10, HTSUS, upon entering the customs territory of the United States.

(3) The unshelled pecans from the United States would qualify for domestic status in the foreign trade zone, and therefore would be eligible for duty-free treatment upon returning to the customs territory of the United States under 19 CFR 146.43(c) provided that they did not lose their identity as domestic merchandise.

(4) The nutshell waste from the shelling operation may be destroyed in the foreign trade zone, exported, or entered into the United States. However, depositing the nutshell waste in the trash would not constitute destruction for these purposes. The nutshell waste could not be removed to the customs territory of the United States for disposal under 19 CFR 146.52(e).

(5) Upon entering the United States, the nutshell waste from the Mexican pecans would be classifiable under subheading 1404.90.00, HTSUS. The nutshell waste from the U.S. domestic pecans could return duty-free to the customs territory of the United States if it retains its identity as domestic merchandise.

Inasmuch as we understand that this matter has been brought to the attention of the Foreign Trade Zones Board at the Department of Commerce, we are furnishing the Board with a copy of this ruling.

(C.S.D. 89–73)

Drawback: Whether certain procedures performed on ultrasound units are incidental operations or a manufacture for drawback purposes.

Date: February 23, 1989
File: DRA-4-CO:R:C:E
220833 GG

TO	:	Regional Commissioner, North Central Region Attention: Chief, Region Drawback Branch
FROM	:	Director, Commercial Rulings Division Headquarters
SUBJECT	:	Same Condition Drawback Claim of General Electric Medical Systems

This is in response to your request for a legal opinion dated August 31, 1988 concerning drawback claims made by General Electric Medical Systems (GEMS) of Milwaukee, Wisconsin.

GEMS imports ultrasound units from Japan and then exports some of the units to Europe. Prior to their exportation, certain procedures are performed on the units to bring them into compliance with European regulatory (IEC) requirements: 1) All external input/output connection and warning labels are replaced with German labels; 2) various labels are installed inside the units; 3) a safety agency compliance label is attached; 4) an internal wiring harness, the external power cord, and the supplied footswitch are exchanged with IEC compliant cables and footswitches of equivalent value; and 5) various fuses are replaced with IEC approved fuses.

GEMS is claiming drawback on the exported ultrasound units and has sought guidance from the U.S. Customs Service on what type of drawback to file for. The issue is whether the procedures described above are incidental operations or a manufacture for drawback purposes.

The first issue to be addressed is whether the described operations are merely incidental, thus enabling GEMS to file for drawback under 19 U.S.C. 1313(j). That drawback provision allows a refund of duties when merchandise is exported in the same condition as when imported. Use of the imported merchandise generally renders it ineligible for same condition drawback; incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) are not, however, considered a use.

The Customs Service has ruled on a similar factual situation in Customs Service Decision (C.S.D.) 82–7, when the adjustment of TV sets for use in Europe was held to be more than an incidental operation. Specifically, the adjustment consisted of unpacking the TV's, switching the voltage from 220 to 110 for reworking, setting the vertical and horizontal hold controls, turning the voltage indicator back to 220v, and repackaging the TV's for export. This ruling states in pertinent part that

> The law specifically allows testing and inspecting. However, if such testing indicates the article as tested * * * is not capable of performing its intended function, there is nothing in the law which allows repair or adjustment in addition to testing to render the article functional. It is clear in this case that as imported, the TV sets could not be used in the area of intended sale, or if used there, would give unsatisfactory reception. The operations performed in the United States rendered the sets functional for the sales market. In short, the sets to be exported are not in the same condition as when imported.

GEMS' procedures, which involve exchanging or adding labels, exchanging various cables and footswitches, and replacing fuses to render the untrasonic units fit for use in European markets, closely resemble the adjustments outlined above. The units are adjusted so that they can be sold overseas; following these procedures they can no longer be used in the United States and are no longer in the same condition as when imported. GEMS cannot claim drawback under 19 U.S.C. 1313(j).

If the modifications done to the ultrasound units were more then incidental, were they a manufacture for drawback purposes? The procedures performed by GEMS can be characterized as a reworking or reconditioning of the merchandise in question. Such operations have been held by Customs not to constitute a manufacture or product for drawback purposes. *See,* e.g., T.D. 55248(1) and information letter DRA-1-CO:R:CD:D, 219277 RB, dated July 7, 1987. A manufacture requires a transformation; a new and different article must emerge, having a different name, character or use. *Anheuser-*

Busch Brewing Association v. *United States*, 207 U.S. 556 (1907). The ultrasound units, although destined for a different market, are still ultrasound units after being brought into compliance with IEC requirements; their name, basic character and use remain the same therefore they are not manufactured for drawback purposes.

In light of the foregoing discussion, you are directed to deny GEMS' same condition or direct identification drawback claims with respect to this merchandise.

(C.S.D. 89–74)

Foreign Trade Zones: Fish admitted to and transferred for exportation from a foreign trade zone.

Date: February 28, 1989
File: CON-13-01-CO:R:C:E
221161 L

DISTRICT DIRECTOR OF CUSTOMS
Honolulu, Hawaii 96806

Re: September 17, 1988, letter from R.A. White and Company Ltd. concerning a fishing vessel.

DEAR SIR:

The following are our responses to the questions raised by R.A. White and Company Ltd. in their letter to you.

Question 1. Documentation and eligibility for documentation of a United States flag vessel, including the determination of United States ownership, is within the jurisdiction of the United States Coast Guard. For further information, you may write to:

Mr. Thomas Willis
Chief, Vessel Documentation
U.S. Coast Guard (GMVI–6/13)
2100 2nd Street, S.W. Room 1312
Washington, D.C. 20593–0001

Question 2. Under the provisions of 46 U.S.C. 12108 and the Nicholson Act, 46 U.S.C. App. 251, a United States vessel documented for the fisheries will not be prohibited from purchasing and taking on tuna outside United States territorial waters (generally, the belt 3 nautical miles wide adjacent to the coast of the United States and seaward of the territorial sea baseline). Unless the United States vessel is documented for the coastwise trade, it will be prohibited from receiving tuna at a point in U.S. territorial waters and unloading the tuna at another such point or a U.S. port.

You should also be aware that the foreign-flag vessel from which the tuna is received will be prohibited from transshipping the tuna it caught or received on the high seas (including the 200 mile United States Exclusive Economic Zone (EEZ)) to the U.S. fishery documented vessel in United States territorial waters (46 U.S.C. App. 251). Further, under 46 U.S.C. 12108 and 12101 (note that the definition of "fisheries" was amended by the Anti-Reflagging Act of 1987; Pub. L. 100–239), the foreign-flag vessel *may* be prohibited from transporting the fish within the United States EEZ.

Question 3. If the fishing vessel is operating within the "Holding" in Legal Determination 80–0198 it will be able to carry bonded fuel and stores to foreign vessels.

Question 4. To the extent that the vessel is operating as a supply vessel pursuant to Legal Determination 80–0198 it may be eligible for bonded fuel and supplies for its own consumption. If the vessel is not operating as a supply vessel its eligibility to withdraw bonded fuel and supplies conditionally free of duty is governed by 19 U.S.C. 1309 and applicable regulations.

Question 5. See Legal Determination 80–0198.

Question 6. The Customs Regulations do not specifically require any reports regarding the purchase of tuna from foreign vessels. However, 46 U.S.C. App. 251(a), as amended by section 8(a), Pub. L. 100–239, January 11, 1988, provides in part that the Secretary of Commerce may issue any regulations that he considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States. Current information on reporting requirements, depending upon the procedure that is finally decided upon, can be obtained from the Fisheries Office, Environmental Data and Information Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 634–7281.

Fish admitted to and transferred for exportation from a foreign trade zone are governed by sections 146.32, possibly 146.34, and 146.67, Customs Regulations. See, too, section 146.51, Customs Regulations, providing in part that the district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. law or regulations.

This is an information letter within the meaning of section 177.1(d)(2), Customs Regulations.

(C.S.D. 89–75)

Marking: Country of origin marking for a man's knit pullover shirt.

Date: February 2, 1989
File: HQ 731033
MAR 2-05 CO:R:C:V pmh

MS. DIANA INCIVILITO
WARNACO SOURCING
485 7th Avenue, 14th Floor
New York, N.Y. 10018

Re: Country of origin marking on imported men's garments.

DEAR MS. INCIVILITO:

This is in response to your letter of February 5, 1988, in which you requested a ruling on the proposed country of origin marking for imported men's knit shirts. We regret the delay in responding to this matter.

Facts:

The submitted sample is a man's knit pullover shirt. The shirt is 100 percent cotton, with a V-shaped neckline. The shirt is beige with white neckline and waistband. Inside the neck of the garment are two white labels with black printing. On one of the labels is the name "Christian Dior." On the other label are the size, the fiber content and the words "MADE IN BRAZIL." Screen-printed in black on the back of the garment are the words "Christian Dior, 30 Avenue Montaigne, PARIS 75008." The words "MADE IN BRAZIL" on the inside label are ⅛th of an inch; the word "PARIS" on the back of the garment is approximately the same size.

Issue:

Whether the country of origin marking on the submitted garment complies with the requirements of 19 U.S.C. 1304.

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country or origin of the article. Part 134, Customs Regulations (19 CFR Part 134), sets forth regulations implementing the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41, Customs Regulations (19 CFR 134.41), provides that the marking of an imported product must be conspicuous enough so that the ultimate purchaser will be able to find the marking easily and read it without strain.

After careful review of the submitted sample garment, we have concluded that the country of origin marking is sufficiently conspicuous to meet the requirements of 19 U.S.C. 1304. It is our opinion that the label inside the neckline is particularly prominent due to the open V-style neckline and that the words "MADE IN BRAZIL" are of sufficient size and boldness to make them readily visible to the ultimate purchaser.

In addition, we note that section 134.46, Customs Regulations (19 CFR 134.46), requires that when the name of any city or locality in the U.S. or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning. The purpose of this section is to prevent the possibility of misleading or deceiving the ultimate purchaser. In this case, we find that due to the prominent placing of the label inside the neckline and the conspicuousness of the words "MADE IN BRAZIL," the country of origin is immediately apparent to the ultimate purchaser. The Paris address would be noticed only upon turning the garment. Consequently, it is our opinion that although the country of origin mark is not in close proximity to the Paris address printed on the back of the garment, the purpose of section 134.46 has been served in this case.

Holding:

Based on all the factors in this case and after careful examination of the sample submitted, we find that the country of origin marking satisfies the requirements of 19 U.S.C. 1304.

(C.S.D. 89–76)

Marking: Country of origin marking of carrots which are grown in the U.S., washed, sized and packaged in Mexico and returned to the U.S. for sale.

Date: March 14, 1989
File: HQ 731618
MAR 2–05 CO:R:C:V 731618 pmh
Category: Marking

MR. S. RICHARD SHOSTAK
STEIN SHOSTAK SHOSTAK & O'HARA
Suite 606
1101 Seventeenth Street, N.W.
Washington, D.C. 20036–4704

Re: Country of origin marking requirements of U.S.-grown carrots exported for processing and packaging and returned to the U.S.

DEAR MR. SHOSTAK:

This is in response to your letters of July 21, 1988 and January 9, 1989, on behalf of your clients, William Bolthouse Farms, Inc. and Grimmway Farms, requesting a ruling on country of origin marking requirements for carrots which are grown in the U.S., washed, sized and packaged in Mexico and returned to the U.S. for sale.

Facts:

You indicate that the subject carrots are grown in the U.S. and exported to Mexico where they are washed, cooled for preservation, sorted according to size, graded for quality and packaged. Thereafter, the carrots are returned to the U.S. for sale to retailers. No further processing of the carrots is performed before sale.

Issue:

Whether there has been a substantial transformation of the carrots grown in the U.S. by the processing operations performed in Mexico, so as to render the carrots products of Mexico.

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides in general that all articles of foreign origin imported into the U.S., or their containers, shall be legibly and conspicuously marked to indicate the country of origin to an ultimate purchaser in the U.S. U.S. products exported and returned are specifically excepted from country of origin marking requirements under section 134.32(m), Customs Regulations (19 CFR 134.32(m)). In applying this section, Customs has ruled that products of the U.S. which are exported for further processing and subsequently returned, are generally not subject to country of origin marking upon importation to the U.S., unless the further processing in the foreign country constituted a substantial transformation of the product. *See e.g.* C.S.D. 80–15; C.S.D. 79–443.

In defining what constitutes a substantial transformation, Customs has held that a new and different article of commerce having a new name, character and use must emerge from the processing. *See United States* v. *Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267, C.A.D. 98 (1940). In addition, factors such as complexity and cost of the processing operations and whether the essence of the article has been changed, have also been considered. *See Uniroyal Inc.* v. *United States,* 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983).

In *National Juice Products Association* v. *United States,* 10 C.I.T. 48, 628 F. Supp. 978 (1986), the Court of International Trade upheld Customs' determination that orange juice concentrate is not substantially transformed when it is processed into retail orange juice products. Although the orange juice concentrate at issue in that

case underwent significant processing, was mixed with orange essences and oils, purified and dechlorinated water and was either packaged in cans and frozen or pastuerized and packaged in liquid form, Customs found that such processing did not change the fundamental character of the orange juice concentrate. Customs further determined, and the court agreed, that it was orange juice concentrate that imparted the essential character to the final product.

Customs has not previously ruled on whether washing and packaging vegetables constitutes a substantial transformation of the vegetables. However, in C.S.D. 86–28, dated June 25, 1986, Customs determined that raw broccoli was not substantially transformed as a result of sorting, trimming, cutting into spears, steam blanching, freezing and packaging. Following the direction it had taken in *National Juice Products Association*, Customs found that such processing did not change the fundamental character and identity of the broccoli and was, in fact, performed to preserve the original characteristics of the broccoli.

As in the broccoli case, the carrots in the present case undergo relatively simple processing. In fact, the processing operations described here consist merely of washing and packaging and do not include the extra steps of steam blanching and freezing that was performed on the broccoli. Consequently, we find that this case is well within the boundaries established by *Uniroyal* and *National Juice Products Association* and that such superficial processing does not change the fundamental character of the carrots or subordinate their identity in any way. Before and after they are washed, sized and packaged in Mexico, the carrots are, and may be marketed as, a "fresh" product. It is our opinion that no new article of commerce has emerged from the Mexican processing and that the final product remains the same in name, character and use.

Holding:

Carrots grown in the U.S. and exported for washing, sizing and packaging as described in this letter, do not undergo a substantial transformation. They remain products of the U.S. and are exempt from the marking requirements of 19 U.S.C. 1304 upon importation to the U.S.

(C.S.D. 89–77)

Restricted merchandise: Lottery tickets.

Date: March 14, 1989
File: HQ 731936
RES-3 CO:R:C:V 731936 SO
Category: Restricted merchandise

J.J. CLANCY
ARTHUR D. LITTLE, INC.
Acorn Park
Cambridge, Massachusetts 02140–2390

Re: Tickets sent to the U.S. by foreign manufacturers of lottery tickets for scientific security evaluation.

DEAR MR. CLANCY:

Your letter of November 9, 1988, addressed to our New Orleans office, enclosing a copy of your letter of July 27, 1988, concerning a shipment of "lottery" tickets that was seized at Memphis, Tennessee, was referred to our office for reply. You requested administrative relief from future seizures under section 305 of the Tariff Act of 1930, as amended (19 U.S.C. 1305), and sections 12.40 and 145.51(a)(5) of the Customs Regulations (19 CFR 12.40, 145.51(a)(5)), which prohibit, among other things, the importation of lottery matter into the U.S.

Facts:

You state that as part of the ticket manufacturing process for state, provincial, and foreign lotteries, ticket manufacturers send tickets to your firm for scientific security evaluation. The tickets which were seized at Memphis were still under development by a Canadian banknote firm. Tickets that are still under development usually contain no name and have the word "VOID" printed or stamped prominently on the face or back. Other tickets *were* originally "live" tickets and part of the game. When these are sent, they are usually drilled with holes or stamped "VOID" by the lottery, using ink that penetrates deeply into the paper and is not erasable. In rare instances, live, unvoided tickets are sent. The live tickets are always fully accounted for and returned by bonded courier.

Issue:

Would all or some of the tickets described above be prohibited importation into the U.S. by 19 U.S.C. 1305, which prohibits the importation of immoral articles into the U.S.?

Law and Analysis:

Section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), prohibits the importation of lottery tickets, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. The courts have held that the three elements essential to constitute

a lottery are a prize, a consideration and a chance (*United States* v. *83 Cases of Merchandise Labeled "Honest John,"* D.C. Maryland (1939), 29 F. Supp. 912, citing *Horner* v. *United States,* 147 U.S. 449, 13 Sup. Ct. 409 (1893)). The Customs Service has also adopted that definition and used it in many of its ruling letters. See for example, #724314 (October 2, 1984), 730107 (February 24, 1987) and 730161 (February 24, 1987).

The 5–10 forms, printed on special paper made by the National Cash Register Company with individual serial numbers on each double form, are not lottery tickets at any point prior to their validation. A lottery ticket is a token of a right to participate in a pool; there is no lottery ticket unless it has been delivered to a player in exchange for payment or is in a completed form available for such delivery (*Finster* v. *Keller,* App. 96 Cal. Rptr. 241 (1971)). "A ticket, of course, is the thing which is the holder's means of making good his rights. The essence of it is that it is in the hands of the other party to the contract with the lottery as a document of title" (*Francis* v. *U.S.,* 188 U.S. 375, 23 S. Ct. 334, 335, 47 L. Ed. 508 (1903)).

We are of the opinion that, with the exception of the so-called "live" lottery tickets, the imported papers do not fall within the prohibitions set forth in 19 U.S.C. 1305. Obviously, it would not be possible for anyone to win a prize through the purchase of the voided tickets which are sent to Arthur D. Little, Inc., by foreign manufacturers of lottery tickets for scientific security evaluation. Tickets under development which are either perforated or printed or stamped prominently in indelible ink with the word "VOID" would not fall within the accepted definition of a "lottery," since no consideration is paid for a chance to win a prize. However, "live" lottery tickets would be prohibited entry into the U.S.

Holding:

Tickets which are either perforated or printed or stamped indelibly with the word "VOID" which are sent to the U.S. for scientific security evaluation, would not fall within the definition of a lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. Also, 19 CFR 1240 and 19 CFR 145.51(a)(5), governing the importation of lottery matter arriving by mail, would not apply to voided lottery tickets shipped by bonded courier or other means. Accordingly, lottery tickets, voided as described above, would not be prohibited entry into the U.S. under 19 U.S.C. 1305, and may enter the U.S. in unlimited quantities without restriction.

Headquarters ruling letter of March 18, 1987 (730232 JL), which advised a Canadian manufacturer of lottery tickets that voided tickets could not be lawfully exported for testing, is hereby expressly revoked. A copy of this decision is being sent to all Customs officers for their guidance.

(C.S.D. 89-78)

Marking: Country of origin marking of interchangeable router bits and screwdriver bits.

Date: January 9, 1989
File: HQ 731938
MAR-2-05 CO:R:C:V 731938 jd
Category: Marking

A. Robert Beikirch
District Director of Customs
40 South Gay Street
Baltimore, Maryland 21202

Re: Country of origin marking requirements for imported router bits and screwdriver bits.

Dear Mr. Beikirch:

This is in response to your memorandum of November 8, 1988 (MAR-2-05-DD:CO:TT:IS:1 GAS), seeking advice on the country of origin marking requirements applicable to interchangeable router bits and screwdriver bits.

Facts:

According to your memorandum, router bits and screwdriver bits are imported in bulk with the outer containers marked with the country of origin. The screwdriver bits are not individually marked as to country of origin. While the router bits are individually marked on the end of the shank, you report than in some instances several letters are missing. The sample submitted had all the letters present but the letters were extremely close to one another and quite small.

All of the screwdriver bits are repacked in blister packs for retail sale. The sample blister pack we examined had country of origin marking. The router bits are repacked either in blister packs, plastic pouches, individual cardboard boxes or individual plastic tubes. All such containers are marked to show country of origin. Some router bits are repacked in blank plastic bags, the bags boxed in bulk, and the boxes sold to industrial users. It is not stated if these boxes carry any marking.

Issue:

Do rotary metal cutting tools of greater than 3/16" diameter, imported in bulk, qualify for an exemption from individual marking based on the fact they will be repacked for retail sale in containers bearing country of origin marking?

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a

conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article.

Section 134.42, Customs Regulations (19 CFR 134.42), states that marking of certain articles shall be by specific methods as may be prescribed by the Commissioner of Customs. By a decision published as T.D. 74–122, Customs established that rotary metal cutting tools (*i.e.*, tools for hand tools or machine tools which are designed to be fitted to such tools and which cannot be used independently and include tools for pressing, stamping, drilling, tapping, threading, boring, broaching, milling, cutting, dressing, mortising or screw-driving of the kind classified in items 649.43, 649.44 and 649.46, Tariff Schedules of the United States) must be marked by means of die stamping in a contrasting color, raised lettering, engraving, or some other method of producing a legible, conspicuous and permanent mark to clearly indicate the country of origin to the ultimate purchaser in the United States. Specifically excluded from methods of acceptable marking were ink stamping, tagging with adhesive labels or any other impermanent form of marking which could be smudged, blurred or otherwise easily obliterated or removed. However, imported rotary metal cutting tools could be excepted from individual marking if they would reach the ultimate purchaser in the U.S. in individual tubes or containers which were legibly, conspicuously and permanently marked to indicate the country of origin of the tools therein. (In accordance with ORR Ruling 639–69, dated January 2, 1970, twist drills having a diameter of less than 3/16″ are considered incapable of being marked.)

Subsequently, two trade associations representing the domestic rotary metal cutting tool industry requested Customs to change its practice in regard to that commodity because of alleged abuses of the exemption allowing tools to be unmarked if they were sold in marked containers. It was claimed that such tools were often removed from their containers before reaching the ultimate purchaser in the U.S.

After reviewing domestic industry's petition, the public comments received in response to the proposed change of practice and the available evidence, Customs concluded that the exception created in T.D. 74–122 to individual tool marking was being abused. To correct this problem the following points were clarified in a decision published as T.D. 84–214:

1. T.D. 74–122 provided for an exception from individual marking requirements in the case of tools *imported in* individual tubes or containers which are marked to indicate the origin of the tools inside.

2. That exception would continue to be available only if it can be shown to the satisfaction of the Customs officers at the port of entry that the containers are of a kind that are virtually certain to reach ultimate purchasers in the U.S.

3. Rotary metal cutting tools imported in individual tubes or containers of cardboard or plastic must be individually marked in accordance with T.D. 74–122 notwithstanding that the container is marked.

Extending the rationale of T.D.'s 74–122 and 84–214 to the case of bulk importations of rotary metal cutting tools, it follows that the tools in such importations must be individually marked. Customs designed the marking requirements for such tools to respond to a problem where unmarked tools were too often removed from their marked containers before delivery to ultimate purchasers. The individual marking of tools imported in insubstantial containers, or in this case no individual container at all, gives a high degree of assurance that the ultimate purchaser will be apprised of the origin of the article.

For your information, we have recently issued a ruling directly to Black & Decker concerning the proper country of origin marking for a router bit assembled in the U.S. with a carbide blade from Israel, a bearing from Italy and other components of U.S. origin. That ruling determined that a substantial transformation of the blade and bearing occurred by their assembly with the other components into a finished router 3/16" bit. Accordingly, the finished router bit reaching ultimate purchasers is not required to have country of origin marking. (See ruling 731363, copy attached.)

Holding:

Rotary metal cutting tools, as described above, of greater than 3/16" diameter, imported in bulk, must be individually marked to show country of origin notwithstanding the fact that they will be packaged in containers showing the origin of the tool. The exception to individual marking, as mentioned in T.D. 74–122 and clarified in T.D. 84–214, is available only in the case of rotary metal cutting tools *imported in* containers that are virtually certain to reach the ultimate purchaser in the U.S., such as sealed index storage boxes.

Of the samples we examined, the screw driver bit was unmarked and therefore did not comply with marking requirements. The router bit was die stamped but not in a contrasting color. Also, it was reported to us that some samples seen at the port were missing letters of the country name. It is our suggestion that the marking be moved to the shank of the tools to ensure that all the letters are displayed, and it remains mandatory that one of the enumerated methods of marking be used, or some other means producing an equally acceptable mark.

(C.S.D. 89-79)

Copyright: Infringement of "Spuds MacKenzie—Spuds," Anheuser Busch, Inc., copyright.

Date: February 1, 1989
File: HQ 732056
CPR-3 CO:R:C:V 732056 SO
Category: Copyright

DISTRICT DIRECTOR OF CUSTOMS
U.S. CUSTOMS MET TEAM
c/o PRICE TRANSFER
2751 E. Dominguez Street
Carson, California 90810

Re: Copyright infringement—"SPUDS MACKENZIE—SPUDS," plush sculpture, Headquarters Issuance No. 87-198, effective December 30, 1987—Anheuser-Busch, Inc., Registration No. VA 273-849, published February 9, 1987.

DEAR SIR:

Your memorandum of January 4, 1989, requested a Headquarters decision pursuant to section 133.43(c)(1), Customs Regulations (19 CFR 133.43(c)(1)), concerning infringement of the above referenced copyright recordation and other recordations by Anheuser-Busch, Inc. for "SPUDS MACKENZIE."

Facts:

A shipment of 3,000 latex toy dogs, to be used as dog toys, made in Korea and consigned to Ethical Products, Inc., was detained by Customs on suspicion of infringement of the above referenced copyright (No. VA 273-849) and many other copyrights of Anheuser-Busch for their famous party animal, "SPUDS MACKENZIE," which have been recorded with Customs for import protection. The imported toy dog is named "SPOTS." He is a light colored English bull terrier with a black patch surrounding its left eye, wearing a pink long sleeved sweater. The package displays "SPOTS" sitting on the beach with the ocean, fish, and palm trees in the background. The exclamation "Life's a beach!" appears at the bottom of the package in large red letters. Anheuser-Busch posted the required surety bond and submitted a legal brief in support of their demand that the imported "SPOTS" toy dogs be excluded from entry into the U.S. The importer denied infringement and submitted a legal brief prepared by their attorney in support of their claim that the imported "SPOTS" toy dogs are non-infringing.

"SPUDS MACKENZIE, THE ORIGINAL PARTY ANIMAL" has been promoted extensively by Anheuser-Busch in TV commercials for their BUD LIGHT beer. Information supplied by Anheuser-Busch indicates that they rank 10th in the nation in revenue spent on advertising ($636.1 million). BUD LIGHT grew 19.7% partly on

the strength of its association with "SPUDS MACKENZIE," a fun loving light colored English bull terrier having a dark patch proximate one eye. A line of "SPUDS" merchandise has also been made available to the public. In the copyrighted work referred to above, "SPUDS" is wearing a long sleeved sweater and is depicted seated on the floor facing the viewer with his front paws touching the floor. In other copyrighted works, "SPUDS" is depicted in beach settings, e.g. on a surfboard riding a wave toward shore with palm trees in the background.

Issue:

Would the toy dog "SPOTS," imported by Ethical Products, Inc., infringe the copyrights of Anheuser-Busch for "SPUDS MACKENZIE?"

Law and Analysis:

The basic test for determining whether there has been an infringement of a copyright is whether substantial similarity exists between two works. The appropriate test for determining whether substantial similarity is present is whether an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work, *Ideal Toy Corp.* v. *Fab-Lu Ltd.,* 360 F.2d 1022 (1966). Another statement of the test is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same, *Peter Pan Fabrics, Inc.* v. *Martin Weiner Corp.,* 274 F.2d 487 (1960). The substantial similarity test was developed in order to bar a potential infringer from producing a supposedly new and different work by deliberately making a trivial or insignificant variations in specific features of the copyrighted work.

Two steps are involved in the test for infringement. There must be access to the copyrighted work and substantial similarity not only of the general ideas but the expression of those ideas as well. Anheuser-Busch obtained its copyright registration for "SPUDS MACKENZIE—SPUDS" on February 9, 1987. It is apparant that the party that made the "SPOTS" toy dogs in Korea had ample opportunity to view the copyrighted work referred to above or many of the other copyrighted works bearing the likeness of "SPUDS." Even without direct evidence of access to the copyrighted work, the substantial similarity between the works may be so striking as to preclude the possibility that the works were arrived at independently.

The arguments advanced by counsel for the importer claiming that "SPOTS" is non-infringing are not persuasive. "SPUDS MACKENZIE—THE ORIGINAL PARTY ANIMAL" is such a well known copyrighted work of Anheuser-Busch that, in our opinion, it would not be necessary for Customs officers to specify only one of the many copyrighted works of Anheuser-Busch protected by Customs when detaining an imported article suspected of copyright in-

fringement. The fact that no dog toys have been licensed by Anheuser-Busch to date is also insignificant. This fact alone does not give the importer the right to sell "SPUDS MACKENZIE" look alike dog toys. If such conduct were allowed, Anheuser-Busch would be precluded from ever entering the dog toy market with a genuine "SPUDS MACKENZIE" product. While the Anheuser-Busch copyrights do not preclude everyone else from ever using the likeness of an English bull terrier in producing and advertising products for sale to the public, we are of the opinion that copying has occurred in this case when an English bull terrier named "SPOTS," with a black patch surrounding its left eye and wearing a pink long sleeved sweater, is packaged sitting on a beach directly above the party type works, "Life's a beach!"

Section 602(b) of the Copyright Law (17 U.S.C. 602(b)) provides that, "In a case where the making of the copies or phonorecords would have constituted an infringement of copyright if this title had been applicable, their importation is prohibited." Section 603(c) of the Copyright Law (17 U.S.C. 603(c)) provides that, "Articles imported in violation of the importation prohibitions of this title are subject to seizure and forfeiture in the same manner as property imported in violation of the Customs revenue laws. Forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be; however, the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of law."

Holding:

We are of the opinion that the imported articles would be prohibited entry into the United States as infringing on the rights of the copyright owner. The imported merchandise is subject to seizure and forfeiture (17 U.S.C. 603). However, the district director of Customs may allow the return of the imported articles to the country of export, whenever he is satisfied that the importer had no reasonable grounds for believing that his act (of importing the infringing dog toys) constituted a violation of law. The bond of the copyright owner shall be returned. Copies of this decision may be furnished to all interested parties.

(C.S.D. 89–80)

Marking: Country of origin marking of imported samples used for the solicitation of orders.

Date: March 14, 1989
File: HQ 732082
MAR 2-05 CO:R:C:V 732082 LR
Category: Marking

DISTRICT DIRECTOR OF CUSTOMS
Seattle, Washington

Re: Country of origin marking requirements for imported samples used to solicit orders of foreign merchandise.

DEAR SIR:

This is in response to your request for internal advice, dated September 21, 1988 (IA 50/88), regarding the country of origin marking requirements of imported samples used for the solicitation of orders.

Facts:

The imported samples will not be sold, distributed or given away, but will be used by the importer for the solicitation of orders for foreign merchandise. According to your memorandum, some ports require these items to be marked with the country of origin while others except these from marking pursuant to 19 U.S.C. 1304(a)(3)(F). The basis for requiring marking on the sample is that the person who is having his or her business solicited should be advised of the country of origin of the merchandise he or she is about to order. For the sake of uniformity, you ask that we rule on the marking requirements applicable to these articles.

Issue:

Whether articles which will be used only for the solicitation of orders for foreign merchandise and will not be sold, distributed or given away are excepted from country of origin marking.

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the U.S. must be legibly, conspicuously and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the U.S. There are, however, certain exceptions to the general rule. Among the exceptions are 19 U.S.C. 1304(a)(3)(D) which provides that articles for which the marking of the containers will reasonably indicate the origin of the articles need not be marked, and 19 U.S.C. 1304(a)(3)(F) which provides that articles imported for use by the importer and not intended for sale in their imported or any other form need not be marked. The implementing

regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (19 CFR Part 134).

For an exception to be granted under 19 U.S.C.(a)(3)(D), the articles must reach the ultimate purchaser in a properly marked container and the container must reach the ultimate purchaser unopened.

Section 134.1, Customs Regulations, defines ultimate purchaser as generally the last person in the U.S. who will *receive* the article in the form in which it was imported (emphasis added). Although this regulation makes clear that the person may "receive" the article either by purchase or by gift, the person must nonetheless receive it.

In this case, the imported articles will be neither sold, distributed, nor given away. Instead, the importer will use them as samples to be shown to prospective customers to solicit sales of similar items. After examination of the samples, the prospective customer would be expected to return them to the salesperson. In these circumstances, we find that the prospective customer does not "receive" the imported article within the meaning of 19 CFR 134.1 and is not properly considered the ultimate purchaser. Instead, the ultimate purchaser is the importer that uses the imported samples to solicit orders. See Legal Determination 79–0382 (HQ 710493, July 17, 1979), (the ultimate purchaser of dinnerware distributed by airlines in-flight for use by passengers was the airline and not the passenger because the passengers will not keep the dinnerware, but will return it to the airline company after usage).

Based on our determination that the importer is the ultimate purchaser, we find that the imported samples are excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) provided Customs officers at the port of entry are satisfied that the imported articles will be used only in the manner described above and that the importer will receive them in their original unopened cartons that are marked to indicate the country of origin.

We also find that articles in question fall within the 19 U.S.C. 1304(a)(3)(F) exception pertaining to articles imported for the use of the importer and not intended for sale. We are of the opinion that the importer is "using" the imported samples by showing them to prospective customers in order to solicit orders. To a person in the sales business, the samples are the tools of the trade. (See HQ 709199, June 28, 1978, in which articles imported for showroom display or for testing purposes were similarly considered for use by the importer within the meaning of 19 U.S.C 1304(a)(3)(F)). Of course, the exception would *not* apply if the samples themselves were to be sold.

To summarize, we conclude that the imported samples may be excepted from marking under either 19 U.S.C 1304(a)(3)(D) or (F).

While we agree with your comment that the prospective customer who is having his or her business solicited may want (or need) to know the country of origin of the merchandise he or she is about to order, the provisions of 19 U.S.C 1304 simply do not require disclosure of this information. The statute only requires that merchandise actually imported be marked to indicate the country of origin to the ultimate purchaser. As indicated above, since we do not consider the prospective customer to be the ultimate purchaser of the samples, the samples are not required to be marked. Of course, the prospective purchaser would be considered the ultimate purchaser of any merchandise that is actually ordered and each of these items would be subject to marking at the time of importation. (Similarly, while a prospective purchaser of mail order merchandise may also want to know the country of origin of the merchandise he or she is about to order, 19 U.S.C. 1304 does not require the disclosure of this information in the catalogue. This type of information is required, however, under the Textile Fiber Identification Act (15 U.S.C. 70, as amended). As a practical matter, even if the samples were marked with their country of origin, this would not necessarily inform the prospective purchaser of the country of origin of the merchandise actually ordered, which may differ from that of the samples.

Although the above-described samples are excepted from country of origin marking under the provisions of 19 U.S.C. 1304, if the imported samples are textile fiber products subject to the requirements of the Textile Fiber Identification Act, or wool products subject to the requirements of the Wool Labeling Act of 1939, as amended (15 U.S.C. 68 et seq.), under the rules and regulations issued by the Federal Trade Commission (FTC) under these Acts, the imported samples, as well as the products themselves, are required to be marked (subject to specified exceptions) with their respective fiber contents and other required information, including country of origin. (See 16 CFR 303.21 and 300.22). Pursuant to sections 11.12 and 11.12b, Customs Regulations (19 CFR 11.12 and 11.12b), the Customs Service is responsible for the enforcement of the labeling requirements of these Acts at the time of importation. If you have any questions regarding the interpretation of the FTC rules and regulations, the FTC should be contacted.

Holding:

Imported articles that are to be used by the importer only as samples to solicit orders of merchandise and are not otherwise for sale or distribution, may be excepted from marking under either 19 U.S.C 1304(a)(3)(D) or (F).

U.S. Customs Service

General Notice

19 CFR Part 177

(RIN #1515-AA71)

CUSTOMS REGULATIONS AMENDMENTS REGARDING CERTAIN ADMINISTRATIVE PROCEDURES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends Part 177, Customs Regulations, by changing certain existing procedures and creating other new procedures that will enhance and expedite Customs dealings with the importing public. The amendments create a new procedure to promote nationwide uniformity in Customs decisions consistent with the mandate of the Anti-Drug Abuse Act of 1988 and allow commercial importers to receive binding rulings on tariff classification under the Harmonized Tariff Schedule of the United States at Customs districts. Further, the amendments clarify the circumstances under which the effective date of a ruling can be delayed in recognition of an importer's reliance on a previous, more favorable ruling and the obligations of a recipient of a tariff classification ruling letter if entry of merchandise described in the ruling letter is subsequently made. The document also removes the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed.

EFFECTIVE DATE: August 30, 1989.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division (202) 566-5868

SUPPLEMENTAL INFORMATION:

BACKGROUND

The administrative rulings program administered by the Customs Service provides a means by which commercial importers can import their products with some certainty regarding Customs treatment of their importation. With the passage of the Omnibus Trade and Competitiveness Act of 1988. (Pub. L. 100-418), and the replacement of the Tariff Schedules of the United States with the Harmo-

nized Tariff Schedule of the United States (HTSUS), Customs is experiencing a far greater use of the administrative rulings program than ever before.

Accordingly, Customs published a notice in the Federal Register (54 FR 8208) on February 27, 1989, proposing changes in its ruling program to accommodate its increased use by importers, to improve Customs responsiveness to the ruling requests received, and to promote greater uniformity in the decisions being issued. The amendments proposed to: (1) create a new procedure to promote nationwide uniformity in Customs decisions; (2) allow commercial importers to receive binding rulings on tariff classification under the HTSUS at Customs districts; (3) clarify the circumstances under which the effective date of a ruling can be delayed in recognition of an importer's reliance on a previous, more favorable ruling; (4) clarify the obligations of a recipient of a tariff classification ruling letter if entry of merchandise described in the ruling letter is subsequently made; (5) remove the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed; and (6) clarify the extent to which previously issued rulings can be the subject of a request for internal advice.

Fourteen comments were received in response to the notice of proposed rulemaking. A summary of each proposed change and a discussion of comments regarding the proposed change follows.

District Ruling Program

Summary:

Commercial importers may apply in writing for an advance binding tariff classification under the HTSUS at the Customs district where the merchandise will be imported or at any other district where the importer would have reason to do business. This program began January 1, 1989, on a trial basis. All rulings issued under this program are binding for the recipient at all ports of entry. The target turn-around time for a binding ruling under this program is 30 days, or 120 days if Headquarters must be involved. Proposed changes to the Customs Regulations to implement this program involved expanding the authority to issue prospective tariff classification rulings from Headquarters and the Regional Commissioner, New York, to all Customs districts and to limit each request to a district office for a ruling to five merchandise items, all of which must be of the same class or kind. The proposed rule also stated that in addition to the information prescribed in section 177.2(b)(1), (2)(i) and (ii), and (5), Customs Regulations (19 CFR 177.2(b)(1), (2)(i) and (ii), and (5)), when submitting a ruling request, a request to the district must include the name of the manufacturer and seller (if available), the country of origin and the importer of record number which will be used at entry.

Discussion of Comments:

Comments were generally favorable regarding the institution of the district rulings program. Some commenters recommended that the scope of the program be broadened to cover Customs rulings in areas other than tariff classification. It was also recommended that we not limit each ruling request to a district office to five merchandise items.

With the enactment of the HTSUS, the resources of the district ruling program were of necessity directed toward providing tariff classification advice on an expedited basis. Customs now does not have the resources to expand the program to other rulings.

In order to afford the importing community equal access to expedited rulings, it is necessary to limit district rulings program ruling requests to five items. It is Customs intent to issue all of its rulings as expeditiously as possible. With this goal in mind, we will periodically review the program to ascertain ways in which it can better serve the public.

Also, Customs has recently established uniform procedures for providing pre-entry classification decisions to the importing public. These procedures—which shift the emphasis of the classification function from transaction based analysis after importation to up-front advice regarding future importations—are designed to complement the district rulings program by expeditiously supplying importers with binding classification rulings. While participation in the pre-entry classification program is granted on a case-by-case basis, all merchandise is eligible for consideration.

It has been pointed out that in certain industries, importations routinely occur simultaneously with the filing of requests for binding rulings. Because the district rulings program is limited to "prospective" transactions, certain importers were concerned that they may not be able to avail themselves of the program's expeditious procedures.

While the district rulings program is limited to prospective transactions, this does not preclude the importing public from receiving district rulings for "continuing transactions"—i.e., while a district ruling will not be issued regarding transactions currently pending before a field office, an importer may still receive a binding ruling regarding prospective transactions (that is, later importations) involving merchandise which is identical to that involved in a current transaction. Internal Advice procedures are available for current transactions.

Some commenters took issue with the requirement that an importer provide the name of the manufacturer or seller when seeking a district ruling. They argue that the name of the manufacturer or seller is irrelevant to a classification decision. Further, an importer often will not have chosen his sources until receipt of the ruling letter. Sourcing is frequently changed for various business reasons such as pricing, quota restraints and production demands.

Customs is well aware that when an importer submits a request for a binding ruling the manufacturer or seller is often unknown. This information is required only if known. While we agree that this information would have no bearing on the classification issue, submission of the manufacturer or seller's name would aid in the facilitation of quota requirements and streamline processing at both release and summary.

Uniformity of Customs Officers' Decisions

Summary:

Section 7361(c) of the Anti-Drug Abuse Act of 1988 (Title VI, Pub L. 100–690) requires the Secretary of the Treasury to promulgate regulations to provide for nationwide uniformity of certain decisions made by Customs officers and to establish procedures by which certain parties affected by the lack of such uniformity may have the alleged inconsistencies resolved. Accordingly, Customs proposed procedures to permit port authorities and any party entitled to either protest a decision of the Customs Service under the protest procedures set forth in sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514, 1515), or utilize the Domestic Interested Party petition procedures set forth in section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) to petition the Customs Service for resolution of an inconsistency or lack of uniformity alleged to exist in: (1) A decision of a Customs officer permitted to be protested by section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), or (2) decisions to conduct intensified examinations or inspections of merchandise at various ports of entry.

It was proposed that the petitioning party be required to furnish information sufficient to document the alleged inconsistency. For tariff classification rulings, competing entries must be identified as to port of entry, date and entry number, and the merchandise must be fully described. In the case of alleged inconsistencies in the inspection or examination of merchandise, the petitioning party must furnish information sufficient to document that a pattern of inconsistency exists. A "pattern of inconsistency" was defined as three or more documented instances in which inspections or examinations were conducted within a particular port that appear inconsistent with inspection or examination decisions of another port or ports when substantially identical shipments are involved. Upon receipt of a properly filed petition, Customs will immediately verify the facts alleged and upon verification will publish a notice in the Federal Register that the petition has been received, describing the alleged inconsistency, and permit 15 days for public comment. After analysis of the public comment, Customs will issue a decision to the petitioner, transmit copies to the ports involved and publish a summary of the decision in the Federal Register and Customs Bulletin. The response to a petition is not protestable.

Discussion of Comments:

Commenters, although generally in favor of the uniformity procedures, had the following concerns. Some commenters suggested that we more clearly define what constitutes a "pattern of inconsistency." In the preamble of the proposed regulations, it was stated that a pattern of inconsistency must be shown regarding "substantially identical shipments" within a particular port, while the proposed regulation stated the pattern of inconsistency must be established where "substantially similar" merchandise is involved. Some commenters were also unclear as to whether the inconsistencies must all occur in one port.

Customs wishes to clarify. A "pattern of inconsistency" would exist where three or more instances are documented in which inspections or examinations are conducted that appear inconsistent with other inspection and examination decisions when substantially similar merchandise is involved. The three or more instances of inconsistency may occur in different ports. While inconsistencies involving shipments of the same importer, manufacturer, commodity and country of origin may clearly be the subject of this petitioning process, inconsistencies involving shipments that are not identical, but substantially similar, may also be the subject of a petition.

Some commenters believe that Customs response to a petition for consistent treatment should be protestable.

Customs believes that this is unnecessary. Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) provides when an action by Customs is protestable. A petitioner who alleges inconsistent treatment and is dissatisfied with Customs is not entitled to protest unless there is an actual liquidation or other action subject to protest under Part 174, Customs Regulations (19 CFR Part 174) and sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514 and 1515).

It was commented that steps should be taken that when a "multiple petition" is returned to a sender, accompanied by a copy of the accepted petition, confidential information is not disclosed regarding the accepted petition.

Customs agrees. A provision is added to the regulations requiring a petitioner to provide a "sanitized" copy of his petition.

Other commenters stated that the applicable public comment period on a petition should be increased from 15 to at least 30 days.

Customs believes that a 15 day comment period is appropriate. This time frame is necessary in order for Customs to expedite the issuance of its decisions.

Delaying the Effective Date of Certain Rulings

Summary:

Customs proposed to amend § 177.9, Customs Regulations (19 CFR 177.9) to specify that it may, from time to time, delay the effective date of rulings which modify or reverse earlier written rulings, or which modify the manner in which Customs has treated "substantially identical" transactions in the past. Customs may provide for the delay on its own initiative or it may act upon a request for a delay made by the recipient of the ruling.

Discussion of Comments:

It was recommended by a commenter that equitable relief should be granted not only in cases of detrimental reliance, but also in cases where an importer is placed at a competitive disadvantage owing to inequality of treatment. By requiring a showing of detrimental reliance, it is argued that importers for whom rulings are pending—and who thus cannot claim a lack of knowledge that the rate of duty may increase on their merchandise—are disadvantaged vis-a-vis other importers of the same type merchandise who, because they are not party to the ruling, are in a position to establish the required reliance for a grant of delay of an effective date of a ruling.

Customs does not agree with this commenter's reading of the language in proposed 19 CFR 177.9(d)(3). The section states that "a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate * * * that they reasonably relied on the earlier ruling to their detriment." In effect, insofar as coverage under the proposed rule is not limited to importers who lack knowledge regarding the pendency of an issue before Customs which may result in a higher rate of duty for their importations, the rule does not penalize one importer vis-a-vis another importer of the same merchandise. Rather, the rule is specifically intended to afford importers an opportunity to make whatever adjustments are necessary once they become aware of a possible modification of Customs treatment. Under the proposed rule, it is envisioned that Customs will carefully examine all relevant factors in making a determination of whether and for how long to grant a delay in an effective date of ruling.

It was also recommended that we extend the period for granting delays in the effective date of rulings from 90 days, to 180 days, or even to 360 days.

Customs disagrees. While our proposed amendment is intended to mitigate the adverse impact of rulings modifying earlier rulings relied upon by importers, should public policy also require that we give expeditious effect to the requirements of the law. We believe that limiting any delay to 90 days properly balances these considerations.

Another commenter suggested that we reduce from two years the period for which an affected party must demonstrate that Customs treatment was sufficiently continuous to establish that the party reasonably relied on receiving such treatment in arranging future transactions.

Customs believes the importer is misreading the language of the amendment. The requirement that an affected party submit evidence covering a 2 year period is *not* to be interpreted as requiring substantially identical transactions spanning an entire 2 year period. Rather, an importer is required to list and otherwise provide whatever relevant evidence exists for the 2 year period immediately prior to the date of the issuance of the modifying ruling.

Finally, it has been suggested that we delete the language which would allow Customs, in analyzing past liquidations claimed to be inconsistent with a subsequently issued ruling, to give "diminished weight" to liquidations involving "transactions of small quantities or values" or merchandise which has been "processed without examination and/or import specialist review."

Delaying the effective date of rulings constitutes an exercise of discretionary authority based on the equitable principle of reliance. In determining whether and for how long to delay the effective date of a ruling which so qualifies, Customs should be able to consider all relevant factors. The extent to which Customs has physically examined previous importations or carefully reviewed information on prior transactions are relevant factors.

Obligation of Recipients of Letter Rulings

Summary:

Customs proposed to amend § 177.8(a)(2), Customs Regulations (19 CFR 177.8(a)(2)) to expressly set forth the obligation of an importer to enter merchandise under a tariff classification consistent with that contained in any classification ruling received by the importer which is in effect. The amendment also requires that a copy of the ruling be attached to the documents filed with the appropriate Customs office in connection with that transaction or shall otherwise indicate with the information filed for that transaction that a ruling has been received.

Discussion of Comments:

Some commenters stated that there is no justification for requiring either that a copy of a ruling letter be submitted or that each transaction include a statement that a ruling has been issued. They believe that this would impose an unnecessary burden and expense on importers.

Customs expends considerable resources in providing tariff classifications to the importing public. Insofar as Customs is bound by the classification rulings it issues, it is only appropriate that the importing public be bound as well.

Although Customs shares the aversion to requiring an additional piece of paper in the entry summary package, one of our major considerations is to ensure that Customs honors its commitment to uniformly apply ruling decisions throughout the country. Without a method for the Import Specialist to know that a ruling exists, an importer risks having summaries rejected or classifications changed due to different views.

Customs is considering implementing a procedure where, under certain circumstances, a ruling could be filed once at each port of entry where the merchandise is entered and reference made to the ruling number on each summary line. We are programming rulings indicators in the Automated Commercial Systems (ACS) on the summary line item screens. When this becomes operational, a copy of a ruling will not be required for Automated Broker Interface (ABI) filers for summary filing. We are also developing a rulings module in ACS to ease field access to rulings. Until that time, however, we believe it is critical to uniformity and in the best interest of the importer to require a paper copy.

Some commenters state that they are entitled to enter merchandise at the tariff rate they feel is warranted.

Customs believes that if a ruling is requested, it should be followed. Making entry consistent with a binding Customs ruling in no way diminishes the available avenues of administrative appeal. Protests may still be filed under Part 174, Customs Regulations, and section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

Some commenters suggested that we should clarify what constitutes a "ruling letter" and provide assurance that only the specific party to whom a ruling is issued is requested to submit that ruling to Customs.

To the extent that the proposed amendment may be ambiguous regarding what constitutes a ruling letter, the amendment is revised to make it clear that it contemplates coverage limited to binding classification rulings, including pre-entry classification decisions issued under Part 177 of the regulations to the party to be bound. It is Customs intent that this amendment does not apply to parties other than those parties to whom the ruling letter in question is issued.

Finally, it has been suggested that Customs should enumerate the specific penalty proceedings which may be instituted against importers who enter merchandise contrary to the requirements set forth in the amendment.

Customs disagrees. As with Customs penalty proceedings in general, penalties may vary depending on a range of factors, such as the differential in the rate of duties, the degree of negligence and the value of the merchandise involved.

Elimination of "Clearly Wrong" Test

Summary:

Customs proposed to remove the "clearly wrong" standard from § 177.10(b) of the Customs Regulations.

Discussion of Comments:

It has been suggested that our proposal to eliminate the "clearly wrong" test is misguided. Specifically, it is argued that the test should be retained because it promotes certainty and uniformity in the importing process.

We do not believe that removal of this provision would adversely affect the importing community. Under the relevant statutory and case law, Customs may only disturb a practice if there exists a compelling reason to do so, and only then after full consideration of public comment. In short, we believe the test has proven to be unrealistic, unnecessary and confusing.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modifications discussed above, should be adopted.

Executive Order 12291

The document does not meet the criteria for a "major rule" as defined in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515–0103. The estimated average annual burden per respondent and/or recordkeeper is .1666 or .50 hours depending on individual circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to U.S. Customs Service, Paperwork Management Branch, Washington, D.C. 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515–0103), Washington, D.C. 20503.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 177

Administrative practice and procedure.

Amendments to the Regulations

Part 177 of the Customs Regulations (19 CFR 177) is amended as set forth below:

PART 177—ADMINISTRATIVE RULINGS

1. The authority citation for Part 177, Customs Regulations (19 CFR Part 177), is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted. § 177.12 also issued under Pub. L. 100–690.

2. Section 177.0, Customs Regulations is amended by revising its first sentence to read as follows:

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the United States Customs Service * * *.

3. Section 177.1, Customs Regulations, is amended by revising the second sentence of paragraph (a)(1), the third sentence of paragraph (b), and the first sentence of both paragraph (d)(1) and (d)(2) to read as follows:

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective Transactions* * * * For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information * * *.

(b) *Oral advice* * * *. However, oral inquiries may be made to Customs Service officers regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Customs Service will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

* * * * * * *

(d) *Definitions* (1) A "ruling" is a written statement issued by the Headquarters Office or the appropriate office of Customs as provided in this part that interprets and applies the provisions of the Customs and related laws to a specific set of facts * * *.

(2) An "information letter" is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts * * *.

4. Section 177.2, Customs Regulations, is amended by revising the last sentence of paragraph (a), adding a new sentence to the end of paragraph (b)(2)(ii)(A), revising paragraph (b)(2)(ii)(B), revising paragraph (b)(2)(ii)(C) and revising the first sentence of paragraph (d) to read as follows:

§ 177.2 Submission of ruling requests.

(a) *Form* * * *. Requests for tariff classification rulings should be addressed to the Regional Commissioner of Customs, New York Region, Attn: Classification Ruling Requests, New York, New York 10048, or to any Area or District office of the Customs Service.

(b) *Contents* * * *.

(2) *Description of transaction* * * *

(ii) *Tariff Classification Rulings.*

(A) * * * Individual requests for rulings submitted to Area or District offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the New York Region of by other Area or District offices are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), of § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under Part 175 of this Chapter (petitions under § 516, Tariff Act of 1930, as amended), decisions under § 177.12 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126–01.

(C) The requesting party may send the request directly to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, D.C. 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the New York Region and other Area and District Offices. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the New York Region or other Area or District offices, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, D.C. 20229, for review of the ruling.

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in the order they are received and as expeditiously as possible.

* * * * * * *

5. Section 177.3 is revised to read as follows:

§ 177.3 Nonconforming request for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise confirm the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

6. Section 177.4(b) is amended by removing its second sentence.

7. Section 177.4(d) is amended by removing its last four words.

8. Section 177.5 is amended by revising the second sentence to read as follows:

§ 177.5 Change in status of transaction.

* * * In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office. * * *

9. Section 177.8 is amended by revising the first sentence of paragraph (a)(1), all of paragraph (a)(2), and the last sentence of paragraph (a)(3) to read as follows:

§ 177.8 Issuance of rulings.

(a) *Ruling letters.*

(1) *Generally.* The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. * * *

(2) *Submission of ruling letters to field offices.* Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling letter (including pre-entry classification decisions) has been issued under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appro-

priate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* * * * All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

* * * * * * *

10. Section 177.9 is amended by revising paragraph (a), revising the last sentence of (d)(2), and adding new paragraph (d)(3) before the concluding text and new paragraph (e) after the concluding text to read as follows:

§ 177.9 Effect of ruling letters; modifications or revocation.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, paragraphs (d) and (e) (ruling letters which modify previous ruling letters or positions) and § 177.10(e) (ruling letters published in the CUSTOMS BULLETIN).

* * * * * * *

(d) *Modification or revocation of ruling letters.* * * *

(2) *Effect of modification or revocation of ruling letters* * * *. Nothing in this paragraph will prohibit the retroactive modification or revocation of a ruling with respect to a transaction which was not prospective at the time the ruling was issued, inasmuch as such a transaction was not entered into in reliance on a ruling from the Customs Service.

(3) *Effective dates.* Generally, a ruling letter modifying or revoking an earlier ruling letter will be effective on the date it is issued. However, the Customs Service may, upon application or on its own initiative, delay the effective date of such a ruling for a period of up to 90 days from the date of issuance. Such a delay may be granted with respect to the party to whom the ruling letter was issued or to any other party, provided such party can demonstrate to the satisfaction of the Customs Service that they reasonably relied on the earlier ruling to their detriment. All parties applying for a delay will be issued a separate ruling letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, the Customs Service may decide to make its decision, with respect to a delay, applicable to all affected parties, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the CUSTOMS BULLETIN and individual ruling letters will not be issued.,

(e) *Ruling letters modifying past Customs treatment of transactions not covered by ruling letters.*

(1) *General.* The Customs Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affected party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transaction, for a period of up to 90 days from the date the ruling letter is issued.

(2) *Applications by affected parties.* In applying to the Customs Service for a delay in the effective date of a ruling letter described in paragraph (e)(1) of this section, an affected party must demonstrate to the satisfaction of the Customs Service that the treatment previously accorded by Customs to the substantially identical transactions was sufficiently consistent and continuous that such party reasonably relied thereon in arranging for future transactions. The evidence of past treatment by the Customs Service shall cover the 2-year period immediately prior to the date of the ruling letter, listing all substantially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by the Customs Service. The evidence of reliance shall include contracts, purchase orders, or other materials tending to establish that the future transactions were arranged based on the treatment previously accorded by the Customs Service.

(3) *Decision by Customs to grant delay.* The Customs Service will examine all factors relevant to the issue of reliance in determining whether, and for what period, to delay the effective date of a ruling letter described in paragraph (e)(1). In particular, the Customs Service will examine the past transactions on which reliance is claimed to determine whether there was an examination of the merchandise (where applicable) by the Customs Service or the extent to which those transactions were otherwise examined and analyzed by the Customs Service to determine the proper application of the Customs laws and regulations. In general, transactions involving small quantities or values, as well as informal entries and other entries or transactions which the Customs Service, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination and/or import specialist review, will be given diminished weight in establishing the required history of consistent and continuous Customs treatment. Unless a notice covering all affected parties is published in the CUSTOMS BULLETIN, each affected party applying for a delay in the effective date of the ruling letter will be advised in a separate ruling letter of the extent to which a delay in the effective date will be applied to their transactions.

11. Paragraph (b) of § 177.10 is amended by removing its last sentence.

12. Section 177.11(b)(1) is revised to read as follows:

§ 177.11 Requests for advice by field offices.

* * * * * * *

(b) *Certain current transactions.*

(1) *When a ruling has been issued.*

(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

13. Subpart A is revised by adding a new section 177.12 (19 CFR 177.12) to read as follows:

§ 177.12 Inconsistent Customs Decisions.

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) a port authority; and

(iii) an "interested party," as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in § 514(a) of the Tariff Act, the petition must be filed within the time prescribed by § 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition.*

(1) *Form.* The petition shall be in the form of a letter addressed to the Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229–0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of mer-

chandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to § 177.2(b)(7) of this Subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in sections 177.2(b)(1) and (b)(2)(ii) of this Subpart, including a sample (see section 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in sections 177.1 through 177.10 of this Subpart, the information contained in sections 177.2(b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the Federal Register announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the petition or in response to the Federal Register solicitation of public comment.

(d) *Determination of petition; distribution and publication.* Within (15) days after the close of the period for public comment referred to in paragraph (c) above, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identified. A summary of the decision will also be published in the Federal Register and the weekly CUSTOMS BULLETIN.

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this procedure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and Parts 174 and 175 of this Chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the Customs Service pursuant to Subpart A of Part 175 of this Chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514–515 of the Tariff Act and Part 174 of this Chapter.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: July 24, 1989.
SALVATORE R. MARTOCHE,
Assistant Secretary of the Treasury.

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General Notice

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